

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2932 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

SURAT PANJRA POLE

Versus

STATE OF GUJARAT

Appearance:

Mr. S.H. Sanjanwala, Advocate, for the Petitioner
Kum. P.S. Parmar, Asst. Govt. Pleader, for the
Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 29/11/96

ORAL JUDGEMENT

The order passed by and on behalf of the State
Government on 22nd February 1985 rejecting the
petitioner's application for exemption from the payment
of land revenue purported to have been made under rule
35(2) of the Gujarat Land Revenue Rules, 1972 (the Rules

for brief) framed under the Bombay Land Revenue Code, 1879 (the Code for brief) is under challenge in this petition under articles 226 and 227 of the Constitution of India.

2. The facts giving rise to this petition move in a narrow compass. The petitioner is a public trust registered under the Bombay Public Trusts Act, 1950 and its Registration No. is Surat-E-56. It appears that it had large parcels of agricultural lands and it had used some part of it for non-agricultural purposes presumably without obtaining what is popularly known as the N.A. permission. Thereupon, by the order passed by the Collector of Surat (respondent No.2 herein) on 2nd July 1980, the constructed portions were regularised and the area represented by the constructed portions from the lands belonging to the petitioner was granted the N.A. permission on payment of the N.A. assessment as mentioned therein. Certain other terms and conditions were also imposed thereby. Its copy is at Annexure A to this petition. By his further order passed on 12th February 1981, respondent No.2 fixed assessment for the period from 1956 to 1978-79. Its copy is at Annexure B to this petition. That appears to have aggrieved the petitioner. It carried the matter in revision before the State Government under sec. 211 of the Code. By the order passed by and on behalf of the State Government on 20th April 1981, the revisional application came to be rejected. Its copy is at Annexure C to this petition. Thereafter the petitioner addressed one communication to the then Revenue Minister in the State of Gujarat for seeking exemption from payment of land revenue with respect to its lands presumably under rule 35(2) of the Rules. Its copy is at Annexure D to this petition. By the order passed by and on behalf of the State Government on 22nd February 1985, the petitioner's application came to be rejected. Its copy is at Annexure E to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under articles 226 and 227 of the Constitution of India for questioning its correctness.

3. Learned Assistant Government Pleader Kum. Parmar is right in her submission that the petitioner ought to have made such application to the Collector as the authority named under rule 35(2) of the Rules is the Collector. It may be noted that by the impugned order at Annexure E to this petition, the petitioner's application at Annexure D to this petition has not come to be rejected on the ground that the petitioner ought to have approached the Collector for the purpose. If the

application under rule 35(2) of the Rules was required to be made to the Collector and the petitioner had wrongly addressed that application to the Revenue Minister, it was the duty of the State Government to have transmitted that application to the concerned Collector for disposal under intimation to the petitioner or ought to have informed the petitioner that it should make such application to the concerned collector. Instead, the State Government decided the application on its own merits. That could not have been done.

4. The grievance of the petitioner before this Court is that the impugned order at Annexure E to this petition has been passed without giving an opportunity of hearing to the petitioner. Learned Advocate Shri Sanjanwala for the petitioner has submitted that, if an opportunity of hearing was given to the petitioner, it could have been pointed out to the concerned authority that the petitioner was eligible for benefit under rule 35(2) of the Rules and non-payment of N.A. assessment for past years was not on unjustifiable grounds. As against this, learned Assistant Government Pleader Kum. Parmar for the respondents has urged that the impugned order at Annexure E to this petition is administrative or executive in nature and no opportunity of hearing could have been given to the petitioner before passing it.

5. It is not necessary to decide whether the decision or the order contemplated under rule 35(2) of the Rules could be said to be administrative or quasi-judicial. According to well-settled legal principles, even when administrative or executive order is required to be passed affecting a party adversely, principles of fair play and justice have to be observed. Principles of fair play and justice would presuppose giving an opportunity to the affected party to present its case against any proposed action. It may be by way of grant of personal hearing or by way of inviting a detailed representation.

6. I am fortified in my view by the Full Bench ruling of this Court in the case of Messrs. Avanti Organization v. Competent Authority and Additional Collector, Urban Land Ceiling reported in 1989(1) G.L.H. 400. In that case, what was involved was grant of exemption under sec. 20 of the Urban Land (Ceiling and Regulation) Act, 1976. This Court has in its aforesaid Full Bench decision ruled that an opportunity of personal hearing or in the alternative an opportunity to make a representation against the proposed action of not

granting exemption ought to be given to the concerned party before passing any final order.

7. Sitting as a single Judge the aforesaid Full Bench ruling of this Court is binding to me. Even otherwise, I am in respectful agreement therewith. By analogy, it will be applicable in the present case. Any adverse decision taken or any adverse order passed with respect to an application under rule 35(2) of the Rules would affect the applicant. It would be necessary to seek his representation why such benefit thereunder could not be given or in the alternative he should be given an opportunity of hearing.

8. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure E to this petition cannot be sustained in law as no opportunity of hearing or representation was given to the petitioner before passing it. It has to be quashed and set aside. The matter will have to be remanded to respondent No.1 for restoration of the proceeding to file and for his fresh decision according to law after giving an opportunity of hearing or representation to the petitioner. It would be open to respondent No.1 to direct the petitioner to approach the concerned Collector for the purpose of availing of benefit, if any, under rule 35(2) of the Rules or to transmit the petitioner's application in question to the concerned Collector for his decision after giving an opportunity of hearing or representation to the petitioner.

9. In the result, this petition is accepted. The order passed by and on behalf of the State Government on 22nd February 1985 at Annexure E to this petition is quashed and set aside. The matter is remanded to the State Government (respondent No.1 herein) for restoration of the proceeding to file and for its fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
